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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,492	03/26/2004	Ted Guidotti	018798-222	7892
21839	7590	12/05/2005	EXAMINER	
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/809,492		GUIDOTTI ET AL.	
	Examiner		Art Unit	
	Melanie J. Hand		3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/26/04, 9/10/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for priority under copending Provisional Application No. 60/457,316 filed on March 26, 2003.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on March 26, 2004 and September 10, 2004 were filed on and after the mailing date of the Application, respectively. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Objections

Claims 15 and 23 are objected to because of the following informalities: The drawings and specification do not support the limitation of a second storage layer that "encloses" a first storage layer, rather the drawings support a second storage layer with dimensions equal to or greater than the first storage layer. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international

application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 7-9, 14-17 and 19-23 rejected under 35 U.S.C. 102(e) as being anticipated by Gross et al (U.S. Patent Application Publication No. 2003/0208175).

With respect to **Claims 1, 3-5, 14-17, 19, 22 and 23**: Gross teaches an absorbent article comprising liquid pervious topsheet 10 and absorbent core 15 comprised of acquisition layer 11, storage layer 12 and wicking layer 13. (Fig. 1) (§ 0080) Examiner is herein regarding the wicking layer 13 as a second storage layer as it is capable of storing bodily exudates as Gross refers to the wicking layer as a "lower storage layer" (§ 0005). Gross teaches that the same material can be used in the wicking layer as in the lower density storage layer 12, and since the storage layer has a thickness less than that of said wicking layer (§ 0005), the amount of superabsorbent material by weight is thus equal to or less than the amount present in the wicking layer. Gross teaches that the absorbent core 15 contains between 50-99% superabsorbent by weight, therefore the first storage layer 12, the lower density layer, contains an amount in that range or less. Gross teaches that the density of a channeled wicking layer (i.e. channels 22 (Figs. 2,9) are created by compacting the web) is between 0.1-0.5 g/cc (§§ 0073,0078) and therefore the density of the lower density storage layer 12 exceeds 0.4 g/cc.

With respect to **Claims 7, 8, 20 and 21**: Gross teaches that acquisition layer 11 is disposed between topsheet 10 and storage layer 12, therefore it is adjacent a first surface of storage layer 12 that faces topsheet 10. (§ 0084) Since first storage layer 12 is a film or sheet of minimal thickness, acquisition layer 11 is concluded herein to lie close to the second surface of storage layer 12 that faces away from topsheet 10.

With respect to **Claim 9**: Gross teaches that the web is densified via embossing which also entangles fibers via heat and pressure. The acquisition layer 11 and topsheet 10 are thus thermally joined in the embossing areas, i.e. channels 22.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross et al ('175).

With respect to **Claims 2 and 18**: Examiner is concluding that additional channels 22 are capable of being formed though Gross does not specifically teach an upper limit to the number of channels 22, only that there is a plurality of such channels. Therefore the density of the first

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storage layer 12 along with any other layer in the web is capable of being increased via the addition of more channels 22 and thus obviously exceeding 0.5 g/cc.

With respect to **Claim 13**: Gross teaches treating the wicking layer 13 with a surfactant to improve wettability (§ 0071). Gross does not explicitly teach that acquisition layer 11 is treated with a surfactant, however Gross teaches that the purpose of the surfactant treatment is to increase wettability. The applicant states in the specification that

In order to further improve such an acquisition layer, it has been shown to be an advantage to corona-treat the acquisition layer. In corona treating, the layer is treated with plasma, which is a gas being subjected to enough energy to entirely or partly ionize the gas. The contact with the energy-rich gas with the surface of the material, results in that radicals are formed on the surface of the material. Thereafter, different types of functional groups are introduced, such as for example, oxygen-containing functional groups. The advantage using such a corona-treated material is that it exhibits an improved liquid distributing ability compared to a non-corona-treated material. (Specification, § 0021)

Examiner is herein regarding corona treatment as an equivalent process to treatment of a film surface with a surfactant in light of the description cited above and in light of the equivalent function and result that the two processes yield. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gross ('175) in view of Lassen et al (U.S. Patent Application Publication No. 2002/0013563).

With respect to **Claim 6**: Gross does not teach a particular width for channels 22. Lassen teaches that the width of article 10 is in the range of 2-10 cm, or 20-100 mm (§ 0057), therefore the transverse width of members 26 and 28 will be less than about 20 mm. Lassen teaches that article 10 has a segmented core with segments of this width so as to accommodate flexure axes to allow it to bend preferentially convexly toward the user's body to put said article in a more advantageous position to perform its function, therefore it would be obvious to one of ordinary skill in the art to modify the channels 22 taught by Gross to have a width of no greater than 20 mm as this allows the crotch portion of the article to conform to fit the crotch area of the user.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross ('175) in view of Berg et al (U.S. Patent No. 5,180,622).

With respect to **Claims 10 and 12**: Gross does not teach that acquisition layer 11 is comprised of polyacrylate foam material. Berg teaches that said foam material is formed by an acrylic acid monomer allowed to polymerize with the aid of an interparticle crosslinking agent sprayed on the acrylic acid monomers. (Col. 7, lines 40-46, Co. 14, lines 28-39) Berg teaches a polyacrylate foam material used in an absorbent core 41 of a diaper 20. (Fig. 1) (Col. 22, lines 61-65). Said absorbent core is comprised of an acquisition zone 56 (Col. 32, lines 35-44) and since the core material is uniform throughout, said acquisition zone 56 is also comprised of polyacrylate foam material. Berg teaches that such a material especially in film form integrated in an absorbent article enhances fluid uptake rate and minimizes gel blocking (Abstract), therefore it would

obvious to one of ordinary skill in the art to modify the acquisition layer taught by Gross to be comprised of a polyacrylate foam sheet material as taught by Berg.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gross ('175) in view of Berg et al ('622) as applied to claim 10 above, and further in view of Chen et al (U.S. Patent No. 6,677,498).

With respect to **Claim 11**: The combined teaching of Gross and Berg does not teach an absorbent article comprising a polyacrylate foam acquisition layer having a Gurley stiffness of less than 1000 gf.

Chen teaches an absorbent article comprising a polymer foam wicking barrier 24 that surrounds central absorbent member 18. Chen teaches that this article has a stiffness of less than 1,000 grams. Examiner is thus concluding that since the structure and by weight superabsorbent composition of the article taught by Chen is substantially identical to the claimed invention, the limitation of a stiffness of less than 1,000 grams is an inherent property of an absorbent article with between 50% and 99% superabsorbent and comprising a polyacrylate foam wicking material.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written over the printed name and title.